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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,817	01/08/2004	Rhonda L. Childress	AUS920030939US1	6768
35525	7590	11/14/2008		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380				
EXAMINER				
ANWAR, MACEEH				
ART UNIT		PAPER NUMBER		
2444				
NOTIFICATION DATE		DELIVERY MODE		
11/14/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeciipaw.com

### Office Action Summary

**Application No.**

10/753,817

**Applicant(s)**

CHILDRESS ET AL.

**Examiner**

MACEEH ANWARI

**Art Unit**

2144

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1- 4, 7, 8, 10- 14 and 21- 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1- 4, 7, 8, 10- 14 and 21- 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 10/30/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

This action is in response to communications file on 8/13/2008.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 22- 24** recite the limitation "the plurality of servers". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 18- 20** are rejected under 35 U.S.C. 101 because the claims fail to place the invention squarely within one statutory class of invention. On paragraph 67 of the instant specification, applicant has provided evidence that applicant intends the "medium" to include signals. As such, the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefore not a composition of matter.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1- 4, 7, 8, 10- 14 and 21- 24** rejected under 35 U.S.C. 103(a) as being unpatentable over **Ogielski et al.** (herein after **Ogielski**) U.S. Publication No.:

2004/0221296 A1 and further in view of **Guha** U.S. publication No.: 2002/0194324 A1.

4. Regarding **claim 1**, **Guha** discloses method in a data processing system for monitoring transactions for a set of known nodes in a network data processing system, the method comprising:

receiving cache data from a router in the data processing system, wherein the cache data includes an identification of the set of known nodes sending data packets for transactions onto the network data processing system (**Par. 14; collecting routing messages/data and obtaining routing patterns**);

identifying the transactions handled by each node in the set of known nodes using the identification of the set of nodes included in the cache data received from the router, to form identified transactions (**Par. 14; monitoring network traffic, collecting routing messages/data**);

analyzing the identified transactions (**Par. 14; analyzing data**); and in response to the analyzing the identified transactions, selectively initiating a load balancing process for at least one of the nodes in the set of known nodes to mitigate transaction overload at the at least one of the nodes (**Figures 6, 9 and par. 18; dynamically balanced loads of storage centers**).

However, **Ogielski** remains silent on the specific teachings of in response to the analyzing the identified transactions, selectively initiating a load balancing process for at least one of the nodes in the set of known nodes to mitigate transaction overload at the at least one of the nodes.

In the same field of endeavor, **Guha** discloses the specific teachings of in response to the analyzing the identified transactions, selectively initiating a load balancing process for at least one of the nodes in the set of known nodes to mitigate transaction overload at the at least one of the nodes (**Figures 6, 9 and par. 18; dynamically balanced loads of storage centers**).

Accordingly it would have been obvious for one of ordinary skill in the networking art to modify or incorporate **Guha's** teachings of load balancing with the teachings of **Ogielski** to provide for a more efficient and robust system.

5. Regarding **claim 2, Ogielski-Guha** further discloses wherein the cache data is from an address resolution protocol cache located on the router (**Par. 14; collecting routing messages/data and obtaining routing patterns**).
6. Regarding **claim 3, Ogielski-Guha** further discloses wherein receiving cache data from other routers on the network data processing system (**Par. 14; collecting routing messages/data and obtaining routing patterns**).
7. Regarding **claim 4, Ogielski-Guha** further discloses wherein the receiving step occurs on a periodic basis (**par. 11; SNMP monitoring**).
8. Regarding **claim 7, Ogielski-Guha** further discloses wherein generating a display of the set of known nodes in a graphical view, wherein the graphical view

includes the communications paths with a graphical indication of the network traffic **(Figures 3; global routing report on user interfaces).**

9. Regarding **claim 8, Ogielski-Guha** further discloses wherein the cache data is received through an agent located on the router **(Abstract and Par. 14; collecting routing data from a plurality of network routers).**

10. Regarding **claim 21, Ogielski-Guha** further discloses wherein the agent clears the address resolution protocol cache each time the cache data is sent to the data processing system **(Abstract and par. 14; network data streamed in real time, and current router data compared to previous router data).**

11. Regarding **claim 22, Ogielski-Guha** further discloses wherein the router receives a request from a client data processing system, where the request is then received by a network dispatcher that is interconnected to the router and a plurality of server data processing systems, where the plurality of servers appear to the client as a single server having a single network address **(Guha- Figures 6, 7, 9 and Abstract and par. 8- 9; clustered servers and requested content).**

**Examiner Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

#### ***Response to Arguments***

12. Applicant's arguments with respect to **claims 1- 4, 7, 8, 10- 14 and 21- 24** have been considered but are moot in view of the new ground(s) of rejection.

13. Furthermore regarding the 35 U.S. C 101 rejection of **claims 18- 20** the applicant has provided within the text of the instant specification the intent to include signals as a medium. Therefore the claims are ultimately drawn to a form of energy and energy is not a series of steps or acts (i.e. a process) nor is it a physical article or object (i.e. a machine or manufacture) and finally energy is not a combination of substances and therefore not a composition of matter.

#### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MACEEH ANWARI whose telephone number is

(571)272-7591. The examiner can normally be reached on Monday-Friday 7:30-5:00 PM ES.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.A.

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444